

REFERENCE TITLE: economic development tax incentives; limit

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HB 2737

Introduced by
Representatives Nelson, Jones, Senator Blendu: Representatives Konopnicki,
Reagan, Smith, Senator Huppenthal

AN ACT

AMENDING SECTION 9-500.11, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005,
CHAPTER 200, SECTION 1; REPEALING SECTION 9-500.11, ARIZONA REVISED STATUTES,
AS AMENDED BY LAWS 2005, CHAPTER 105, SECTION 2; RELATING TO MUNICIPAL TAX
INCENTIVES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 9-500.11, Arizona Revised Statutes, as amended by Laws 2005, chapter 200, section 1, is amended to read:

9-500.11. Economic development incentives: requirements; limitations; conditions; definitions

A. In addition to any other powers granted to a city or town, the governing body of a city or town may appropriate and spend public monies for and in connection with economic development activities.

B. To fund economic development activities under this section, a city or town subject to the requirements of section 9-500.06 shall not impose a new fee or tax on a single specific industry or type of business.

C. Notwithstanding section 19-142, subsection B, a decision by the governing body involving an expenditure pursuant to this section shall not be enacted as an emergency measure and that decision is not effective for at least thirty days after final approval of the expenditure.

D. THE GOVERNING BODY OF A CITY OR TOWN MAY ENTER INTO A RETAIL DEVELOPMENT TAX INCENTIVE AGREEMENT AS AN INDUCEMENT OR IN EXCHANGE FOR RETAIL DEVELOPMENT ACTIVITIES OR LOCATING OR RELOCATING A RETAIL BUSINESS IN THE CITY OR TOWN, SUBJECT TO THE REQUIREMENTS OF THIS SECTION, IF THE PROPOSED TAX INCENTIVE WILL PRODUCE MORE REVENUE THAN THE AMOUNT OF THE INCENTIVE DURING THE TERM OF THE AGREEMENT.

D. E. EXCEPT AS PROVIDED BY SUBSECTION F OF THIS SECTION, before entering into a retail development tax incentive agreement, a city or town shall **AT A PUBLIC HEARING** make a finding by a simple majority vote of the governing body ~~without the use of consent calendar~~ AFTER A PUBLIC HEARING that includes both of the following:

1. That the proposed tax incentive is anticipated to ~~raise~~ PRODUCE more revenue than the amount of the incentive within the duration of the agreement. THE FINDING UNDER THIS PARAGRAPH MUST BE VERIFIED BY AN INDEPENDENT THIRD PARTY BEFORE THE CITY OR TOWN ENTERS INTO THE AGREEMENT. THE DEVELOPER OR RETAIL BUSINESS RECEIVING THE INCENTIVES UNDER THE AGREEMENT SHALL NOT FINANCE THE INDEPENDENT THIRD PARTY OR HAVE INPUT INTO THE SELECTION OF THE INDEPENDENT THIRD PARTY.

2. That in the absence of a tax incentive, the retail business facility or similar retail business facility would not locate in the city or town in the same time, place or manner.

E. F. A city or town located in or within twenty-five miles of the exterior boundary of a metropolitan statistical area having a population of more than two million persons shall make a finding pursuant to subsection D E of this section, by a two-thirds vote of the governing body.

F. A city or town shall not enter into a retail tax incentive agreement if the proposed tax incentive raises less revenue than the amount of the incentive.

1 G. A city or town shall present a status report of the revenues and
2 expenses associated with the tax incentive every two years for the duration
3 of the agreement in a public meeting.

4 H. The finding made pursuant to subsection D, paragraph 1 of this
5 section shall be verified by an independent third party before the city or
6 town enters into the retail development incentive agreement.

7 G. ANY RETAIL DEVELOPMENT TAX INCENTIVE AGREEMENT ENTERED INTO AFTER
8 SEPTEMBER 30, 2006 MUST BE STRUCTURED AS FOLLOWS:

9 1. THE AGREEMENT MUST PROVIDE THAT THE EXPENDITURES FOR THE INCENTIVE
10 MAY BE DERIVED ONLY FROM THE FIRST ONE-HALF OF ONE PER CENT OF THE REVENUES
11 GENERATED AT THE SITE OVER THE TERM OF THE AGREEMENT THAT ARE SUBJECT TO THE
12 CITY'S OR TOWN'S SALES, USE OR TRANSACTION PRIVILEGE TAX.

13 2. THE AGREEMENT MUST STATE A MAXIMUM CUMULATIVE DOLLAR AMOUNT OF THE
14 TAX EXPENDITURE CONSIDERING MARKET ANALYSES CONDUCTED BY THE DEVELOPER, THE
15 RETAILER OR THE CITY OR TOWN BEYOND WHICH NO FURTHER INCENTIVE IS ALLOWED
16 REGARDLESS OF WHETHER THE FULL TERM OF THE AGREEMENT UNDER PARAGRAPH 3 OF
17 THIS SUBSECTION HAS EXPIRED.

18 3. THE AGREEMENT MUST INCLUDE A TERMINATION DATE, NOT MORE THAN SIXTY
19 MONTHS AFTER THE FIRST RETAIL UNIT IS OPEN FOR BUSINESS, AFTER WHICH NO
20 FURTHER INCENTIVE IS ALLOWED TO BE EARNED OR PAID REGARDLESS OF WHETHER THE
21 MAXIMUM AMOUNT OF THE EXPENDITURE UNDER PARAGRAPH 2 OF THIS SUBSECTION HAS
22 BEEN DELIVERED.

23 H. THE REQUIREMENTS OF SUBSECTION G OF THIS SECTION APPLY REGARDLESS
24 OF WHETHER THE PRIMARY INDUCEMENT IS OFFERED FOR RETAIL DEVELOPMENT
25 ACTIVITIES OR FOR LOCATING OR RELOCATING A RETAIL BUSINESS IN THE CITY OR
26 TOWN. IF A RETAIL DEVELOPMENT TAX INCENTIVE AGREEMENT IS FOR:

27 1. RETAIL DEVELOPMENT ACTIVITIES, THE DEVELOPER MUST AGREE TO:

28 (a) COOPERATE AND PROVIDE FOR THE COMPILATION AND SUBMISSION TO THE
29 CITY OR TOWN AND TO THE AUDITOR GENERAL OF ANY DATA THAT ARE NECESSARY TO
30 ADMINISTER AND ENFORCE THE TERMS OF THE AGREEMENT.

31 (b) WAIVE CONFIDENTIALITY UNDER STATE AND FEDERAL LAW REGARDING TAX
32 INFORMATION FURNISHED BY THE DEVELOPER SOLELY FOR THE PURPOSE OF THE
33 ADMINISTRATION OF THE AGREEMENT BY THE CITY OR TOWN AND THE ENFORCEMENT OF
34 THE AGREEMENT BY THE AUDITOR GENERAL.

35 (c) INCLUDE IN ANY LEASES AND SUBLICENSES RESPECTING THE PROPERTY AND
36 REQUIRE OF LESSEES AND SUBLICENSEES THE SAME DATA GATHERING OBLIGATION AND
37 LIMITED WAIVER OF CONFIDENTIALITY OF TAX INFORMATION FURNISHED BY THE LESSEE
38 OR SUBLICENSEE FOR THE PURPOSES OF ADMINISTERING AND ENFORCING THE AGREEMENT.

39 2. LOCATING OR RELOCATING A RETAIL BUSINESS, THE BUSINESS MUST AGREE
40 TO:

41 (a) COOPERATE AND PROVIDE FOR THE COMPILATION AND SUBMISSION TO THE
42 CITY OR TOWN AND TO THE AUDITOR GENERAL OF ANY DATA THAT ARE NECESSARY TO
43 ADMINISTER AND ENFORCE THE TERMS OF THE AGREEMENT.

44 (b) WAIVE CONFIDENTIALITY UNDER STATE AND FEDERAL LAW REGARDING TAX
45 INFORMATION FURNISHED BY THE RETAILER SOLELY FOR THE PURPOSE OF THE

1 ADMINISTRATION OF THE AGREEMENT BY THE CITY OR TOWN AND THE ENFORCEMENT OF
2 THE AGREEMENT BY THE AUDITOR GENERAL.

3 ~~K.~~ I. A city or town shall adopt a notice of intent to ~~enter into~~ CONSIDER ENTERING INTO a retail development tax incentive agreement at least
4 fourteen days before approving a retail development tax incentive agreement.

5 ~~I.~~ J. The adoption of the retail development tax incentive agreement
6 shall, AT A PUBLIC HEARING, be approved by a simple majority vote of the
7 governing body, ~~without the use of consent calendar.~~ ~~For EXCEPT THAT IN~~ a
8 city or town located in or within twenty-five miles of the exterior boundary
9 of a metropolitan statistical area having a population of more than two
10 million persons, the adoption of a retail development tax incentive agreement
11 shall be approved by an affirmative vote of at least two-thirds of the
12 governing body. ~~without the use of consent calendar.~~

13 ~~J. A person or business entity receiving the retail development tax
incentive agreement shall not finance the independent third party
verification of the findings or have input into the selection of the
independent third party verifying the findings.~~

14 K. EVERY TWO YEARS FOR THE DURATION OF THE AGREEMENT THE CITY OR TOWN
15 SHALL PRESENT IN A PUBLIC MEETING A STATUS REPORT OF THE REVENUES AND
16 EXPENDITURES ASSOCIATED WITH THE AGREEMENT.

17 L. THE AUDITOR GENERAL SHALL DEVELOP AND PRESCRIBE THE FORM OF AUDIT
18 REPORTS RESPECTING EACH AGREEMENT. THE AUDIT REPORT IS DUE FROM THE CITY OR
19 TOWN WITHIN NINETY DAYS AFTER THE TERMINATION OF THE AGREEMENT. THE AUDITOR
20 GENERAL SHALL AUDIT THE EXPENDITURES UNDER THE AGREEMENT AND ENFORCE THE
21 LIMITATIONS PRESCRIBED BY SUBSECTION G OF THIS SECTION. IF THE AUDITOR
22 GENERAL DECLINES OR FAILS TO BEGIN THE AUDIT WITHIN ONE HUNDRED TWENTY DAYS,
23 NO FURTHER ACTION IS AUTHORIZED. IF, AFTER AUDIT, THE AUDITOR GENERAL
24 DETERMINES THAT THERE IS AN UNINTENTIONAL VIOLATION OF THE LIMITATIONS
25 PRESCRIBED BY SUBSECTION G OF THIS SECTION:

26 1. THE AUDITOR GENERAL SHALL NOTIFY THE PARTIES TO THE AGREEMENT OF
27 THE VIOLATION BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED.

28 2. THE PARTIES MAY CORRECT THE VIOLATION WITHOUT PENALTY WITHIN NINETY
29 DAYS AFTER THE DATE OF THE NOTICE.

30 3. IF THE PARTIES FAIL TO CORRECT THE VIOLATION, THE PARTIES ARE
31 SUBJECT TO A CIVIL PENALTY EQUAL TO THREE TIMES THE AMOUNT OF ANY
32 EXPENDITURES THAT EXCEEDS THE LIMIT, PAYABLE BY THE PARTIES IN EQUAL
33 PROPORTIONS. THE PENALTIES SHALL BE PAID TO THE AUDITOR GENERAL FOR CREDIT
34 TO THE STATE GENERAL FUND.

35 ~~L.~~ M. ~~Subsection~~ SUBSECTIONS D THROUGH L of this section ~~does~~ DO not
36 apply WITH RESPECT to:

37 1. MUNICIPAL SERVICES AND BENEFITS THAT ARE GENERALLY AFFORDED BY
38 ORDINANCE TO ALL NEW BUSINESSES IN THE CITY OR TOWN AND THAT HAVE NO DIRECT
39 EFFECT ON MUNICIPAL TAX REVENUES.

1 2. Tax incentives given to a business entity in **OR LOCATING OR**
2 **RELOCATING INTO** an area that is designated by a city or town as a
3 redevelopment project as defined in section 36-1471.

4 3. INCENTIVES CONSISTING OF PUBLIC INFRASTRUCTURE FEATURES FURNISHED
5 AND OWNED BY THE CITY OR TOWN, INCLUDING TRANSPORTATION, WATER, SEWER AND
6 OTHER PHYSICAL FACILITIES AND AMENITIES.

7 4. INCENTIVES THAT ARE OFFERED FOR THE PURPOSE OF PRESERVING
8 HISTORICAL BUILDINGS AND OTHER STRUCTURES.

9 5. INCENTIVES THAT ARE OFFERED FOR CLEANUP OR OTHER REMEDIATION
10 ACTIVITIES AT A BROWNFIELDS SITE UNDER TITLE 49, CHAPTER 2, ARTICLE 1.1 OR
11 THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF
12 1980 (P.L. 96-510; 94 STAT. 2767; 42 UNITED STATES CODE SECTIONS 9601 THROUGH
13 9657), COMMONLY KNOWN AS "SUPERFUND".

14 **M.** N. For the purposes of this section:

15 1. "Economic development activities" means any project, assistance,
16 undertaking, program or study, whether within or outside the boundaries of
17 the city or town, including acquisition, improvement, redevelopment, leasing
18 or conveyance of improved or unimproved real or personal property or other
19 activity, that the governing body of the city or town has found and
20 determined will assist in the creation or retention of jobs or will otherwise
21 improve or enhance the economic welfare of the inhabitants of the city or
22 town.

23 2. "Expenditure" includes any waiver, exemption, deduction, credit,
24 rebate, discount, deferral or other abatement or reduction of the normal
25 municipal tax liability that otherwise applies to similar existing business
26 entities and properties in that city or town, however denominated, computed
27 or applied, and that is generally understood as an inducement to locate a
28 business facility or other operation in the city or town.

29 3. "Metropolitan statistical area" means a geographical area
30 consisting of cities, towns and other populated areas defined for federal
31 statistical and census purposes by the United States office of management and
32 budget with technical assistance from the United States bureau of the census.

33 4. "Retail" means the sale of tangible personal property, except the
34 sale of tangible personal property to a person who is engaged in the business
35 of selling such property.

36 5. "Retail development activities" means those economic development
37 activities that involve the acquisition, improvement, leasing or conveyance
38 of improved or unimproved real or personal property or other activity to
39 facilitate the sale of **goods** **TANGIBLE PERSONAL PROPERTY** at retail, including
40 the sale of automobiles, or to facilitate other activities, including theater
41 and restaurant development, that generate revenues that are subject to
42 municipal **SALES, USE OR** transaction privilege taxation.

43 6. "Retail development tax incentive agreement" means an agreement
44 between a city or town and a person engaged in or planning to engage in
45 retail development activities **OR THE LOCATION OR RELOCATION OF A RETAIL**

1 BUSINESS within that city or town in which the city or town agrees to pay,
2 refund, credit, rebate or otherwise provide to that person all or a portion
3 of the sales, use or transaction privilege taxes payable to that city or town
4 in connection with ~~the construction, development or operation of the~~ retail
5 development activities OR THE LOCATION OR RELOCATION OF A RETAIL BUSINESS IN
6 THE CITY OR TOWN.

7 Sec. 2. Repeal

8 Section 9-500.11, Arizona Revised Statutes, as amended by Laws 2005,
9 chapter 105, section 2, is repealed.